

DEPARTMENT OF STATE REVENUE

01-20180711R.ODR

**Final Order Denying Refund: 01-20180711
Individual Income Tax
For Tax Years 2012 - 2015**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Married couple did not establish that out-of-state local taxes were paid by them or paid by the husband's LLP on behalf of the husband.

ISSUE

I. Individual Income Tax–Refund.

Authority: IC § 6-8.1-9-1; IC § 6-3.5-1.1-6; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); Memorandum of Decision 01-20170256R (January 31, 2018); Louisville, Kentucky Metro Code § 110.02.

Taxpayers protest the denial of their claim for refund.

STATEMENT OF FACTS

Taxpayers, husband and wife, filed a Claim for Refund ("GA-110L" form) with the Indiana Department of Revenue ("Department") for years 2012 through 2015. Per Taxpayers' GA-110L form the dates of the tax payments by them were in May, June, and August of 2017, and the refund claim was filed in October 2017. The Department denied Taxpayers' refund claim in a letter dated December 4, 2017. Taxpayers in turn filed a protest with the Department. An administrative hearing was held; this written ruling results. Further facts will be presented as required.

I. Individual Income Tax–Refund.

DISCUSSION

The Department initially notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as all the Department's previous decisions, shall be entitled to deference. Taxpayers' refund claim was filed pursuant to IC § 6-8.1-9-1.

The Department's denial letter states in relevant part: "Supporting documentation to disprove the referenced tax liabilities were not timely submitted." Taxpayers argue that they have provided supporting documentation. Taxpayers frame the issue as follows:

[The Department] has erroneously imposed additional Income Tax against taxpayers inappropriately by denial of the credit taken on such returns for taxes paid to non-Indiana localities (Kentucky) due to the erroneous belief that "The Local credit only applies to 'income tax' paid to the other locality." ". . . Occupational license tax is calculated based on the amount of income the business makes, but is not an income tax."

Taxpayers then provide a description of what they believe are the pertinent background facts:

[Husband] is an owner of a business in Kentucky which pays local income based taxes on form OL-3 in [] County, Kentucky as well as other local jurisdictions. Such amounts paid represent income based taxes and should be allowed to be taken as credits on Taxpayers individual income tax returns as "Credits Paid to non-Indiana Localities." [The Department] denied these credits after reviewing the returns supporting the credits taken under the sole precept that the taxes paid are not "income based taxes."

In support of their position, Taxpayers cite to Kentucky's constitution, a Kentucky city ordinance, Kentucky cases, and Indiana law. Regarding the latter, the Indiana law cited by Taxpayers includes IC § 6-3.5-1.1-6, prior Indiana Information Bulletins, and various published written decisions by the Department. The Department turns to an examination of the various statutes and a 2017 Memorandum of Decision ("MOD") below.

Before its repeal in 2017, IC § 6-3.5-1.1-6 stated:

- (a) Except as provided in subsection (b), if for a particular taxable year a county taxpayer *is liable for an income tax imposed by a county, city, town, or other local governmental entity located outside of Indiana, that county taxpayer is entitled to a credit against his county adjusted gross income tax liability for that same taxable year.* The amount of the credit equals the amount of tax imposed by the other governmental entity on income derived from sources outside Indiana and subject to the county adjusted gross income tax. However, the credit provided by this section may not reduce a county taxpayer's county adjusted gross income tax liability to an amount less than would have been owed if the income subject to taxation by the other governmental entity had been ignored.
- (b) The credit provided by this section does not apply to a county taxpayer to the extent that the other governmental entity provides for a credit to the taxpayer for the amount of county adjusted gross income taxes owed under this chapter.
- (c) *To claim the credit provided by this section, a county taxpayer must provide the department with satisfactory evidence that he is entitled to the credit.*
(*Emphasis added*).

The Kentucky statute at issue, KRS 91.260, states in relevant part, "Each city of the first class shall raise a revenue from ad valorem taxes and from taxes based on *income, licenses and franchises.*" (*Emphasis added*). Taxpayers state that the "Kentucky locality tax authorized under KRS 91.260(1) . . . was based on income and was not a license tax as the Department originally believed." Taxpayers argue that Kentucky's "locality tax is equivalent to an income tax."

One of the Department's written decisions cited to by Taxpayers is Memorandum of Decision 01-20170256R (January 31, 2018), 20180131 Ind. Reg. 045180013NRA. Taxpayers believe that the facts of their case are substantially the same as those found in that MOD. That ruling, which involved different taxpayers than those of the current protest, stated:

Taxpayers are a married couple living in Indiana. Taxpayers earned income from employment in Kentucky and filed amended returns for the tax years 2012 and 2013 claiming a refund of Indiana county taxes by application of a credit for locality taxes paid in Kentucky. The Indiana Department of Revenue ("Department") denied the claimed refund based on its belief that the Kentucky locality taxes did not qualify for the claimed credit. Taxpayers protested the denial of refund. An administrative hearing was held and this Memorandum of Decision results. Further facts will be supplied as needed.

Further, the MOD cites to KRS 91.260(1) and found:

Taxpayers provided substantial documentation regarding their income sources and filing methodology in both Kentucky and Indiana. This documentation establishes that the Kentucky locality tax authorized under KRS 91.260(1), and which Taxpayers paid, was based on income and was not a license tax as the Department originally believed. Thus, Taxpayers were eligible to claim the locality tax paid in Kentucky as a credit against their Indiana county taxes, as provided by IC § 6-3.5-1.1-6(a). This was the only reason given by the Department at its initial refund review level for denying the claimed refunds, and since Taxpayers have established that they correctly claimed the credits at issue, Taxpayers have established that they are eligible for the claimed refunds of Indiana county income tax for 2012 and 2013.

Thus the conclusion of the above referenced MOD was that the occupational license tax was based upon income.

In the present case, Taxpayers have not established that the tax at issue was imposed on the husband personally and not on the Limited Liability Partnership itself. Taxpayers have not provided the Department with a copy of a Louisville/Jefferson County return that shows that the husband paid the tax at issue as an individual (that is to say, Taxpayers have not established that the husband was truly responsible for the tax, and not the LLP). In fact, Chapter 110, Section 110.02(D) of the Louisville/Jefferson County Metro Code of Ordinances states in relevant part, "The occupational license taxes imposed in this chapter are assessed against business income at the entity level and before it is passed through to the partners, members, shareholders or owners." In other words, it is the entity—*viz.*, the LLP—that the occupational license tax is imposed upon. Nor have Taxpayers provided evidence of

a Kentucky composite return showing tax paid on the husband's behalf. Although not part of Taxpayers' protest, it should be noted that Taxpayers' K-1 for other states shows "composite tax paid on [Taxpayer's] behalf." The Kentucky K-1 does not show this.

FINDING

Taxpayers' protest is denied.

September 25, 2018

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